

**Reddy v Reddy Construction Company Ltd [2008] FJHC 301;
HBC0078.2000L (29 August 2008)**

**IN THE HIGH COURT OF FIJI
AT LAUTOKA**

CIVIL ACTION HBC NO 0078/2000L

BETWEEN

RAJESH REDDY
father's name Ranga Sami Reddy
Plaintiff

AND:

REDDY CONSTRUCTION COMPANY LIMITED
1st Defendant

YANKTESH PERMAL REDDY
son of Sankar Sanyasi
2nd Defendant

YANKTESH PERMAL REDDY
son of Sankar Sanyasi, as Executor & Trustee of
Estate of Ram Sami Reddy
3rd Defendant

NATIVE LAND TRUST BOARD
4th Defendant

Mishra Prakash & Associates for the plaintiff
Young & Associates for the 1st, 2nd & 3rd defendants

JUDGMENT

[1] In January 1957, three brothers, Mr. Ranga Sami Reddy, Mr. Ram Sami Reddy and Mr. Yanktesh Permal Reddy (Mr. Y.P. Reddy) commenced business under the firm name Reddy Construction Company. In 1958 Native Lease No. 12438 (the land or the Lami property) was issued to them as the registered lessees. Reddy Construction Company paid the Native Land Trust Board (the NLTB) £453.2 shillings. The balance sheet of the partnership for the period ending 31 December 1958 showed the land as an asset valued at £453.2 shillings. As the business grew the Reddy brothers decided to form a company. On 28 April 1962 they signed a Memorandum of Association each subscribing to 5000 shares.

[2] The objects for which the company was established included:

"3(a) The objects for which the Company is established are:

*To acquire from Ram Sami Reddy, Ranga Sami Reddy and Yanktesh Permal Reddy carrying on business at Suva and Lautoka and elsewhere in Fiji as builders and contractors under the style or firm name of Reddy Construction Co., the business now carried on by them **including the freehold and leasehold land of the said business and buildings, stock-in-trade, plant, machinery, tools, equipment, vehicles, book debts and other assets of the said business and also the good-will of the said business and benefit of all existing and pending contracts of the said business**".*

[3] On 2 May 1962 Reddy Construction Company Limited (the company) was incorporated. The Share Certificate issued to the three subscribers had endorsed on the back of the certificates the words "*Issued in consideration of part payment on account of assets & liabilities taken over from Reddy Construction Company.*" On 14 May 1962 the company resolved to buy the partnership property as shown in the Balance Sheet of 1 January 1962.

[4] Mr. Ranga Sami Reddy managed the company's Suva office and properties including the Lami property. He was the managing director of the company from its inception until he died on 11 September 1988. From October 1988 to September 1991 his son Mr. Rajesh Reddy, the plaintiff herein, was the company secretary. After Mr. Ranga Sami Reddy's death his close friend, W M Pillay (Mr. Pillay) was appointed Executor and Trustee of his Estate. Probate was taken out in October 1989. On 15 February 1990 Mr. Pillay and Mr. Y.P Reddy, on his own account and as the sole surviving Executor and Trustee of the Estate of Mr. Ram Sami Reddy, executed a Declaration of Trust declaring *inter alia* that the land was held by them as trustees for and on behalf of the company. In June 1991 Mr. Rajesh Reddy attended as company secretary a company meeting where it was resolved that the financial accounts for the year ending 31 December 1990 be approved. He signed the minutes of that meeting. The financial statements, specifically the Tax Depreciation Schedule, included the land identified as the Lami Property-Bldg as part of the company's assets. In September 1991 Mr. Rajesh Reddy resigned as company secretary. He sold his 7,503 company shares which he had inherited from his father to his uncle Mr. Y.P Reddy for \$500,000.00.

[5] After Mr. Pillay died, Mr. Rajesh Reddy took out Letters of Administration De- Bonis-Non of his father's estate. In January 1998 he executed as administrator a transfer of the land to the company. On 26 March 1998 the company became the registered proprietor of the land.

The Plaintiff's claim

[6] Mr. Rajesh Reddy instituted these proceedings as the Administrator De-Bonis Non of his late father, Mr. Ranga Sami Reddy's Estate. He alleged that the late Mr. Ranga Sami Reddy was and is the rightful owner and registered proprietor of a one-third share in the land. He claimed that Mr. Y.P Reddy in his personal capacity and in his capacity as the sole surviving Executor and Trustee of the Estate of Mr. Ram Sami Reddy fraudulently and in collusion with Mr. Pillay and the company created the Declaration of Trust. He alleged that the Declaration of Trust was illegal and fraudulent in that:

- (i) It had not been agreed amongst the tenants in common that the said land and the improvements thereon were being held in trust for the company
- (ii) Mr. Pillay did not have the authority or basis to enter into the said Declaration of Trust and by doing so acted beyond his powers and breach his fiduciary duties and his duty of fealty to the estate of Mr. Ranga Sami Reddy;
- (iii) Mr. Y P Reddy as the sole surviving Executor and Trustee of the Estate of Mr. Ram Sami Reddy did not have authority or basis to enter into the Declaration of Trust and by doing so acted

beyond his powers and breach his fiduciary duties and his duty of fealty to the estate of Mr. Ram Sami Reddy.

(iv) The late Mr. Ranga Sami Reddy had never intended to part with and/or transfer his one-third undivided share in the land to the company and/or in trust for the company but to retain the same for the benefit of his beneficiaries

(v) The Declaration of Trust was an attempt by the company and Mr. Y.P Reddy to deprive the plaintiff and/or the beneficiaries of the Estate of Mr. Ranga Sami Reddy of their interest in the said land and constituted a fraud on his estate.

[7] He also alleged that Mr. Y P Reddy being the majority shareholder of the company and being in control of the company fraudulently and in collusion with the company acted to his detriment and deprived him of his rights, entitlements and shares in the land, as a result of which he alleged that the company and Mr. Y.P Reddy were guilty of unconscionable conduct and unjust enrichment. Included in the nine particulars pleaded was that the execution of the Declaration of Trust deprived the plaintiff of his just share in the land, withholding information relating to income generated from the land fraudulently and in order to deprive the plaintiff of his right refused him access to the land and to records of income and wrongfully taking possession of the land and to buildings thereon since 1962.

[8] The transfer of the land to the company was alleged to be fraudulent, and/or void and/or of no effect in that the company and Mr. Y.P Reddy are alleged to have induced the plaintiff to execute the transfer and application for consent to assign the said land on 19 January 1998 on the pretext and misrepresentation that the Declaration of Trust was legal and binding. Eleven additional particulars of this fraud were pleaded.

[9] Five declarations were sought including a declaration that the Estates of Mr. Ranga Sami Reddy and Mr. Ram Sami Reddy with Mr. Y.P Reddy are the lawful lessees of Native Lease No. 12438. The plaintiff also seeks orders for accounts of income and expenditure in respect of the said land, judgment for one-third share of all rents and benefits received from the Lami property and further that the Registrar of Titles be ordered to cancel the registration of Transfer No. 439457 registered in favour of the company on 26 March 1998.

1st, 2nd and 3rd defendants (the defendants) Defence to the claim

[10] The principle defence to the plaintiffs claim is that from 1962 the plaintiff and the defendants have held the land contained in Native Lease No. 12438 in trust for the company. They do not dispute that the improvements on the land are rented out and rental income has been received by the company. They maintain that the plaintiff is not entitled to an account as alleged because he does not hold a share in the said land as claimed. By way of further defence they alleged that the plaintiff's action is barred under the [Limitation Act](#).

[11] By way of counter claim the defendants alleged that Mr. Ranga Sami Reddy, Mr. Y.P Reddy and Mr. Ram Sami Reddy were allotted shares in the company in exchange for their respective interest (as partners) in the assets of the firm Reddy Construction Company and all of them agreed to hold their one-third shares in Native Lease No. 123438 in trust for the company. The company financed and paid for all improvements on the said land. They claimed that the company also paid for all rates, NLTB rental, insurance, other expenses and disbursements in relation to both the said land and improvements thereon including all its maintenance and repairs. Further that Mr. Ranga Sami Reddy attended Board meetings of the company and resolved with Mr. Y.P Reddy and the late Mr. Ram Sami Reddy to transfer ownership of the said land to the company and thereafter as a

Director and shareholder of the company participated in company meetings that dealt with and treated the said land as property owned by the company. In the circumstances it was alleged that the plaintiff was now estopped from denying that from on about 1962 the plaintiff along with the 2nd and 3rd defendants were holding the property as constructive trustees until the said land was transferred and registered in the name of the company on 26 March 1998. Particulars of conduct giving rise to an estoppel were pleaded in paragraph 15.

[12] It was further alleged that after the death of Mr. Ranga Sami Reddy, his executor and trustee Mr. Pillay and later the plaintiff in his capacity as Administrator De-Bonis Non conducted themselves in such a manner that recognized the trust. The particulars of such conduct were pleaded at paragraph 16. The defendants maintained that due to such conduct the plaintiff is now estopped from not recognizing that the company is the sole beneficiary and lawful owner of the one-third share in Native Lease No 12438 previously held by the late Mr. Ranga Sami Reddy. The defendants seek a declaration that the company is the sole beneficiary and lawful owner of the one-third share of Mr. Ranga Sami Reddy in Native Lease 12438.

How did the registered lessees of Native Lease No 12438 deal with the said land?

[13] Aside the documentary evidence, the only evidence in this regard was that heard from Mr Y P Reddy. He testified that prior to 1962 the firm he and his brothers formed was doing small jobs. In the 1960s the brothers decided to tender for larger jobs and were advised by their Accountant to form a limited liability company so that they would not be held personally liable in respect of their business dealings. The company was formed. The Memorandum of Association clearly stipulated that the objects for which the company was established was to acquire from Mr. Ram Sami Reddy, Mr. Ranga Sami Reddy and Mr. Y.P Reddy who were then carrying on business under the firm name of Reddy Construction Co., the business carried on by them at the time including the freehold and leasehold land of the said business and buildings; stock-in-trade, plant, machinery, tools, equipment, vehicles, book debts and other assets of the said business. The plaintiff conceded in cross-examination that all the firms' equipment, machinery, appliances and stock-in-trade were transferred to the company. He had also in his own words used the words "bulk store" and "paint factory" to describe the two buildings built on the land.

[14] Mr. Y.P Reddy testified that the said Native Lease was from the inception of the company treated as part of the company's assets in the company books. The land was a vacant block. In 1966 the company built the improvements, which consisted of substantial industrial buildings described by the plaintiff as the bulk store and the paint factory. The buildings were constructed at a cost to the company of £14,000.00. That was a substantial sum of money at the time. He testified that from 1962 the company paid the land rental to NLTB and after the buildings were constructed paid for all insurance expenses, rates and maintenance. This was not disputed by the plaintiff. There was no evidence whatsoever led by the plaintiff to dispute Mr. Y.P Reddy's account that it was in fact the company that had paid for the construction costs of the improvements and all associated expenses thereafter pertaining to the land and the buildings thereon. Learned counsel for the plaintiff cross-examined Mr. Y.P Reddy in regard to the failure to produce receipts showing that the company had in fact paid these expenses. Much has been made about the failure to these receipts. I have made allowances for this taking into account that such expenses would have accrued to the company at least **40 years ago**. It would be extremely unreasonable and entirely unrealistic to expect the production of such documents going that far back. Although these are continuing expenses, there was also no credible evidence produced by the plaintiff showing that Mr. Ranga Sami Reddy personally or his estate contributed to payment of these outgoings. In my view there can be no doubt whatsoever that from 1962 the company paid for all expenses in respect of the Lami property.

[15] When the company was formed, Mr. Ranga Sami Reddy was the managing director, a position he held until he died. As a company director he did, as did his two brothers, cause the land in question to be entered and identified as an asset owned by the company. This was confirmed by the company resolution dated 14 May 1962 wherein the three brothers (the only directors and shareholders of the company at the time) resolved that the company buy the undertaking and assets of Reddy Construction Co. All three brothers were allotted shares in the company which were "issued in consideration of part payment on account of assets and liabilities taken over from Reddy Construction Company". Mr. Ranga Sami Reddy would have been fully aware and would have approved (there being no evidence to the contrary) the expenditure of company funds to finance the improvements on the land. As a director and shareholder of the company he signed the Memorandum and Articles of Association and took up shares in the company. He had resolved at the meeting of the company in 1962 that the company buy all the undertakings and assets of the firm, Reddy Construction Company. He took no issue with the company building the improvements on the native lease in question. He would have approved the expenditure of company funds to develop the land. He would have been fully aware that the company paid all rates and associated expenses in respect of the land and the improvements thereon. He would have been aware and took no issue that the property was subsequently represented in the company's balance sheet as a company asset. He signed off on the company accounts reflecting this, which is evidenced in the company accounts produced at the hearing where the land and improvements are identified variously as:

- LAND – LAMI valued at £453.2.0 (the purchase price paid to the NLTB) in the accounts ending 31 December 1961;
- Native Lease at Lami (inc. cost of plan) valued at £664.12.0 in the accounts ending 31 December 1966;
- Lami Building (Paint Factory – New) in the Depreciation Schedule for 1966;
- Lami Reclamation (In progress) in the balance sheet ending 31 December 1967;
- Lami Land and Building (Paint Factory) in the Depreciation Schedule for 1967
- Lami Land and Building (Paint Factory) in the Depreciation Schedule for 1968

[16] In my view the evidence showed conclusively that after the formation of the company the founding directors and shareholders all treated the firm's assets as having being transferred and owned by the company. I note that there are no entries on any of the accounts produced reflecting any outstanding liability or payment due to any of the brothers. Mr. Mishra submitted that Mr. Ranga Sami Reddy was an astute man. Surely he would have taken issue if he considered that the Lami property was not a company asset. Surely he would have taken issue during his lifetime if he disputed the company's entitlement to all income derived from the improvements constructed on the land. He clearly did not take issue, there being no evidence to the contrary. He signed off on the accounts that reflected the land in Lami as an asset of the company. Mr. Y.P Reddy testified that the company was a family business and the brothers operated on the basis of complete trust in each other. I found him to have been a sincere witness and have accepted as having been truthfully rendered his testimony in regard to the formation of the company and how each of the brothers who were the founding members accepted and operated the business on the basis that the assets of the firm became the assets of the company upon its formation.

Did Mr. Ranga Sami Reddy's conduct give rise to a constructive trust?

[17] A constructive trust attaches by law to specific property which is neither expressly subject to any trusts nor subject to a resulting trust but which is held by a person in circumstances where it

would be inequitable to allow him to assert full beneficial ownership of the property.^[1] In my view this is a clear case and I need not elaborate further on the relevant principles. The evidence has established that by conduct the original three lessees of Native Lease No. 12438 having a common intention agreed to have their respective shares in the said lease transferred to the company. The facts and dealings between the brothers was such that in equity a fiduciary character was imposed on each of them towards the other in relation to the Lami property, holding it as constructive trustees for the company. The minutes and balance sheets of the company evidenced the constructive trust by treating the land as company property and which was clearly communicated, in the company books to each of the founding members including Mr. Ranga Sami Reddy who signed off on the accounts. By his conduct discussed in the preceding paragraphs Mr. Ranga Sami Reddy held the land as a constructive trustee until it was formally transferred to the company. His estate is estopped from contradicting and purporting to retract the position that he had conducted his business affairs on. Clearly, it would be inequitable to permit his estate to assert any beneficial ownership to the Lami property, as claimed. I have accepted the explanation from Mr. Y.P Reddy that there was an oversight in not attending to the transfer during the lifetime of Mr. Ranga Sami Reddy. Mr. Mishra's oral submission that Mr. Y.P Reddy lied when he said that the failure to transfer during the lifetime of his two brothers was an oversight, was without any foundation whatsoever.

The Declaration of Trust

[18] Mr. Pillay was a close friend of Mr. Ranga Sami Reddy. When he applied for probate in respect of his estate, he valued the estate in the sum of \$553,784.00. The Statement of Assets and Liabilities which he submitted did not include the Lami property as forming part of Mr. Ranga Sami Reddy's estate. The plaintiff adopted the same position when he applied to be Administrator De-Bonis Non. He took no issue about the exclusion of the Lami property from his father's estate while Mr. Pillay was alive. These proceedings purport to challenge that state of affairs. Mr. Pillay acted consistently in the knowledge that the Lami property was excluded from Mr. Ranga Sami Reddy's estate when he signed the Declaration of Trust. The plaintiff himself recognized the existence of the Trust. He had obtained independent legal advice which he acted on. He executed a transfer in favour of the company. The company is now the registered lessee of the property by virtue of that transfer. I have preferred the submission of Mr. Young that the Declaration of Trust itself was not illegal as there was no "*dealing*" with the land when the Declaration of Trust was executed. The Declaration of Trust remained inchoate until a decision was made to transfer the property at which point the NLTB consent was required and was obtained. The Declaration of Trust merely confirmed that the registered proprietors held the lease in trust for the company and would transfer the native lease when directed by the company as beneficiary. There was no dealing with the lease under Deed, the beneficiary had not sought to enforce the trust by seeking the transfer until after the NLTB's consent had been obtained. I agree entirely with Mr. Young that there are no questions whatsoever of Mr. Pillay dealing with the native lease as if the said lease was owned by the estate. To the contrary, Mr. Pillay at all times dealt with the said lease on the premise that it was owned by the company. The estate of Mr. Ranga Sami Reddy is estopped from now taking a contrary position from that which was recognized and acted upon previously.

Indefeasibility and fraud

[19] The onus of proving fraud rests with the party alleging it. The onus of proof, whilst still on the balance of probabilities, requires 'a higher degree of probability'.^[2] Motive is never enough. A circumstantial case must be more than mere conjecture or surmise.^[3] The evidence must be clear and convincing and not of 'inexact proofs, indefinite testimony and indirect inferences'.^[4] There

must be something in the nature of moral turpitude and personal dishonesty.^[5] Something must be said of the plaintiff's pleadings. Paragraph 10 of the claim purports to list eight 'particulars of fraud' supporting the general allegation that the Declaration of Trust was illegal and fraudulent. The so-called particulars pleaded consist of nothing more than bare allegations which do not in any way sufficiently set out facts of moral turpitude and personal dishonesty on the part of Mr. Pillay and Mr. Y. P. Reddy. Paragraph 16 of the claim purports to set out nine 'particulars of fraud' supporting the general allegation that Mr. Y. P. Reddy fraudulently and acting in collusion with the company was guilty of unconscionable conduct towards the plaintiff and unjust enrichment. Again the alleged fraudulent conduct consists of general allegations which are insufficient to amount to an averment of fraud. For example how could paragraph 16 (b) '*failing to pay rent with respect to the occupation of the said land*' amount to fraudulent conduct? How could (d) '*refusing to allow the plaintiff access to the said land*' amount to fraudulent conduct? The same observations are made in respect of the general allegation of fraud and the twelve particulars pleaded at paragraph 18 of the amended statement of claim. Of the twelve particulars pleaded there is not a single fact disclosed of dishonesty or moral turpitude. I concur with Mr. Young that the plaintiff has recklessly referred to the word fraud without any further allegation of facts supporting a charge of fraud.

[20] Not surprisingly, given the inadequacy of the pleadings, there was not a shred of credible evidence produced by the plaintiff tending to establish personal dishonesty or moral turpitude on the part of Mr. Y.P Reddy or Mr. Pillay or of any other officer of the company in the way they dealt with the land in Lami, the estate of Mr. Ranga Sami Reddy, the Declaration of Trust and the subsequent transfer of the lease to the company. The plaintiff's challenge to the indefeasibility of the company's registered Title fails. I reject outright the suggestion that the plaintiff was induced by the company and Mr. Y. P. Reddy to execute the application for consent to assign the said land and the subsequent transfer. The plaintiff by his own admission had and acted upon independent legal advice. He did not strike me as a person who was unfamiliar with the formal nature of these documents and the consequences that flowed from his execution of the documents. He is well educated, had been an officer of the company where he had worked closely with his father and he had run his own business. He is not a person who was ignorant of the affairs of the company or of how the business was conducted. He executed the transfer after having been advised independently of the company and Mr. Y.P Reddy. The threshold requirements necessary to establish the fraudulent conduct and illegality pleaded have simply not been met.

The [Limitation Act](#)

[21] That the claim is statute barred was pleaded as a defence. The plaintiff initiated these proceedings as the administrator of the estate of Mr. Ranga Sami Reddy. I concur with Mr. Young that the plaintiff's case is to be viewed from the perspective of the late Mr. Ranga Sami Reddy and not Rajesh Reddy, his son and beneficiary. The late Mr. Ranga Sami Reddy would have been aware that the Lami property was for all intents and purposes treated as a company asset from 1962. To suggest otherwise is incongruous. He had six years from 1962 or 1966 when the land was developed to challenge the representations in the company's balance sheet, the Board minutes or the beneficial use of the Lami property by Reddy Construction Company Limited. The claim by his estate is statute barred. The plaintiff has not established by evidence that he falls within one of the exceptions of section 15 of the [Limitation Act](#), therefore the provision does not apply and extension of the limitation period does not arise for consideration. The action is statute barred.

Orders

(i) The plaintiff's claim is dismissed with costs to the 1st, 2nd and 3rd defendants assessed in the sum of \$2,500.00.

(ii) A Declaration is granted that Reddy Construction Company Limited is the sole beneficiary and lawful owner of the one-third share of Mr. Ranga Sami Reddy in Native Lease No. 12438.

Gwen Phillips
Judge

At Lautoka
29 August 2008

[1] Halsbury's Laws of England, Fourth Ed. Vol. 48, para. 587

[2] **Briginshaw v Briginshaw** [1938] HCA 34; (1938) 60 C L R 336 cited in Jennyne Gonzalez v Mohammed Aktar & Ors, (Civil Aviation No. HBC 073/92)

[3] **Richard Evans & Co. v Ashley** (1911) AC 674 at p. 687

[4] Ibid Briginshaw at p. 361

[5] **Assets Co. Ltd v Mere Roti** (1905) AC 176 at p. 210

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